

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MRA-3/50098

PRELIMINARY RECITALS

Pursuant to a petition filed August 2, 2001, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Barron County Dept. of Social Services in regard to the spousal impoverishment provisions of the medical assistance program, a hearing was held on September 10, 2001, at Barron, Wisconsin. The record was left open for 14 days at the petitioner's request.

The issue for determination is whether the petitioner's spouse requires income from their assets to meet his basic needs.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Denise Westin, ESS
Barron County Dept Of Human Services
Courthouse Room 338
330 E Lasalle Ave
Barron, WI 54812

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxx) is a resident of a nursing home in Barron County.
2. The petitioner applied for institutional medical assistance on June 1, 2001. The county agency denied her application because her assets exceeded the program's limits.
3. The petitioner's spouse lives in the community.
4. The following assets are listed in the petitioner's name:
 - a. Life insurance \$2,498.78 (cash surrender value)

- b. MJSR money market & equity acct. \$24,562.94
- 5. The petitioner's life insurance policy produces a dividend that averages \$20.80 per month. Her MJSR account produces a dividend that averages \$109.41 per month.
- 6. Each month the petitioner also receives \$481 from social security and \$144.13 from a pension.
- 7. The following assets are listed in the name of the petitioner's spouse:
 - a. Life insurance \$9,955.83 (cash surrender value)
 - b. Life insurance \$23,092.94 (cash surrender value)
 - c. Non-exempt vehicle \$600
- 8. The petitioner and her spouse jointly list the following assets:
 - a. CFB checking account \$10,322.44
 - b. CFB account \$9,235.01
 - c. Firststar account \$713.33
 - d. CFB cert. dep. \$7,200.93
 - e. Firststar cert. dep. \$3,376.04
 - f. Vanguard mutual fund \$5,417.59
 - g. Fortis mutual fund \$21,723.67
 - h. Non-exempt GMC pickup truck \$2,800
- 9. The CFB and Firststar accounts produce \$63.98 in income each month.
- 10. The Fortis and Vanguard mutual funds produce \$74.38 in income each month.
- 11. In addition to his share of the return on the various investments, the petitioner's spouse receives \$919 per month in social security, \$894.66 from an annuity, and \$170.92 from a pension. Thus, the petitioner has \$1,984.58 before he receives any money from the assets held by him and the petitioner.
- 12. The petitioner has not demonstrated that he has any exceptional expenses.

DISCUSSION

The federal Medicare Catastrophic Coverage Act of 1988 is designed to protect from destitution a person whose spouse enters a nursing home and receives medical assistance. The law allows couples with assets between \$100,000 and \$174,000 to assign half of their assets to the community spouse. §49.455(6)(b)3, Wis. Stats. *MA Handbook*, Appendix §23.4.2. The petitioner and her spouse have \$122,499.50 in countable assets. Because an institutionalized person can have up to \$2,000 in assets, couples in this position generally are allowed to have up to \$63,249.75 in assets and still maintain one of the spouse's eligibility for medical assistance. Nevertheless, if the community spouse's income falls short of his needs, he may request through a fair hearing that the asset limit be increased so that more income can be produced. The administrative law judge must assign sufficient assets to generate "enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance..." §49.455(8)(d), Stats. The minimum monthly maintenance needs allowance currently is the lesser of \$2,175 or \$1,935 plus excess shelter costs. *MA Handbook*, Appendix §23.6.0. Excess shelter costs are shelter costs above \$562.50. *Id.*

The asset limit may not be increased here because the spouse's income is sufficient to meet his needs without additional income from the assets. Documents submitted on behalf of the petitioner by the Barron County Department of Health and Human Services show that her spouse receives \$1,984.58 each month from social security, a pension, and an annuity that is not listed as an asset. *Exhibits 1 and 4; Finding of Fact #11*. Because he has not documented any exceptional expenses, he is entitled to only \$1,935 per month, or \$49.58 less than he currently receives. Testimony established that an annuity that brings in almost \$900 a month will end in 2002. Although this will bring the spouse's income below the minimum monthly needs level, I must determine this matter on what the circumstances were when the petitioner applied for medical assistance rather than on what they will be in the future. The petitioner will have to reapply for medical assistance when her circumstances change if she continues to desire it.

I note that if the petitioner reapplies for medical assistance after the annuity ends, she will not necessarily receive it. A recent final decision approved by the Deputy Secretary holds that life insurance generally cannot be allocated toward the spouse's increased asset share because it is not readily available for meeting monthly expenses. MRA-68/48394. I am required to follow all final decisions of the Deputy Secretary. The matter now before me involves three life insurance policies, including one held by the petitioner. The petitioner's policy has a cash surrender value of approximately \$2,500 so, because it cannot be allocated to the spouse, it alone would place the petitioner over medical assistance's \$2,000 asset limit. I also note that the same rationale that excludes life insurance policies may also exclude other assets that do not produce readily available income.

CONCLUSIONS OF LAW

The petitioner is ineligible for medical assistance under the spousal impoverishment provisions of the program because her spouse's income is sufficient to meet his needs without the aid of additional income from their assets.

NOW, THEREFORE, it is

ORDERED

That the petition herein be and the same hereby is dismissed.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this 30th day of
October, 2001.

/s Michael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
1121/MDO

cc: Barbara Peterson-Barron Co. - Fax
Susan Wood